

01509

DECISION



Michael Doyle
Proc. 1
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-127569

DATE: February 4, 1977

MATTER OF: ABC Cleaning Service, Inc.

DIGEST:

Where agency reports and GAO concurs that award was improper, sole issue for consideration is whether termination of contract for convenience of Government and resolicitation of requirement would be in best interest of Government. In view of (1) improper award; (2) expected minimal, if any, termination costs to Government; (3) and time remaining under contract, immediate resolicitation is recommended based on current conditions and present Government needs.

ABC Cleaning Service, Inc. (ABC), protests the award of a contract to the Trash Collection Company (TCC) under invitation for bids (IFB) No. DSA 710-768-0037 issued by the Defense Construction Supply Center (DCSC), Columbus, Ohio, for trash collection services during fiscal year 1977.

The IFB requested prices on two service options (option 1 - the Government provides all containers; option 2 - the contractor provides some containers) and advised that the lowest price of either option would determine the successful bidder. Two bids were received, as follows:

<u>Firm</u>	<u>Option 1</u>	<u>Option 2</u>
ABC	\$59,375	-----
TCC	85,700	\$30,150

After bids were received and evaluated, it was determined that an award based on option 2 would result in the lowest overall cost to the Government because an estimated \$60,000 in replacement and maintenance costs relating to Government containers could be expected if award was made based on option 1. Subsequently, award was made to TCC based on option 2.

B-187569

In a report dated December 28, 1976, the then Defense Supply Agency (now Defense Logistics Agency) (DSA) states, and we concur, that the award to TCC was not proper citing Jacobs Transfer, Inc.; Kane Transfer Company, 53 Comp. Gen. 797 (1974), 74-1 CPT 213, since the IFB specified that award would be based on the lowest price of either option. Thus, ABC should have been in line for award. However, DSA concurs in the contracting officer's determination that the termination of TCC's contract would not be in the best interest of the Government for the following reasons:

"* * * Because award was made on the basis of contractor-furnished trash collection containers, 57 of 155 Government-owned containers are in the process of being disposed as salvage. Funds are not available to purchase new Government containers, and TCC, a small business concern, has expended substantial sums for new containers, which costs may not be recoverable under the short-form Termination for Convenience of the Government clause in its contract (ASPR 7-1902.16(b))."

ABC argues that TCC's contract should be terminated and the requirement resolicited at the earliest possible opportunity.

The sole issue for our consideration is whether in the circumstances it is in the Government's best interests to resolicit the existing requirement and, if necessary, terminate TCC's contract for the convenience of the Government.

We recognize that the resolicitation based on conditions existing at the time of the initial solicitation is not possible now because some Government containers are no longer available for use. We also recognize that the contract, with exercise of an option provision could continue until December 31, 1977. In view of (1) the improper award; (2) the expected minimal, if any, termination costs to the Government, in light of DSA's above statement; and (3) the time remaining under the contract--by letter of today we are recommending to the Director of the Defense Logistics Agency that the requirement be resolicited immediately. The resolicitation should be based on present conditions reflecting the current supply of Government-owned containers and current Government needs.

B-127549

If TCC is not the successful bidder under the resolicitation, we recommend that TCC's present contract be terminated and award be made to the new successful bidder. If TCC is the successful bidder on the resolicitation, at a lower price than that contained in its existing contract, TCC's contract should be modified in accordance with the terms of the resolicitation. Also, a clause in the resolicitation should expressly provide that TCC, as a condition of participating in the resolicitation, agrees to the modification scheme. Burroughs Corporation, B-186313, December 9, 1976, 56 Comp. Gen. _____, 76-2 CPD 472.

Protest sustained.

Since this decision contains a recommendation for corrective action, we have furnished a copy to the congressional committees referenced in section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1970), which requires the submission of written statements by the agency to the Committees on Government Operations and Appropriations concerning the action taken with respect to our recommendation.

Deputy


Comptroller General
of the United States